

RELIABILITY COMPLIANCE ENFORCEMENT IN ONTARIO

June 27, 2016

Training provided for Ontario market participants by the Market Assessment
and Compliance Division of the IESO

Module 2: MACD Processes

A MACD training presentation

This presentation has been prepared to assist in the Ontario Independent Electricity System Operator's (IESO) training of market participants and has been compiled from extracts from the market rules or documents posted on the web site of the IESO, NERC, NPCC and other source documents. Users of this information are reminded that they remain responsible for complying with all of their obligations under the market rules and associated policies, standards and procedures relating to the subject matter of this presentation, even if such obligations are not specifically referred to herein. While every effort has been made to ensure the information in this presentation is accurate and up to date, users must be aware that the specific provisions of the market rules or particular document shall govern.

MACD Compliance Monitoring and Enforcement: Overview

- Compliance Monitoring

- self-certifications
- spot checks
- compliance audits
- self-reports
- other IESO business units/third-party referrals

- Compliance Enforcement

Investigation Stage

- formal/informal investigations
- requests for information
- notice of alleged breach
- notice of alleged breach with conditions

Enforcement Stage

- notice of non-compliance
- close out letter
- compliance orders
- market rule reminder
- financial penalties

RELIABILITY STANDARDS COMPLIANCE MONITORING

Compliance Discovery Methods

MACD uses a combination of discovery methods to monitor compliance with market rules and reliability standards:

- self-certifications,
- spot checks,
- compliance audits,
- self-reports, and
- other IESO business units/third-party referrals.

Discovery Methods: Self-Certifications

- Self-certification is the mandatory reporting of compliance or non-compliance with actively monitored reliability standards.
- With input from NERC and NPCC CMEP, MACD develops an annual Compliance Monitoring Plan (“CMP”) that identifies the reliability standards monitored for compliance in Ontario.
- The self-certification process is triggered based on the MACD CMP.
- Initial notice and instructions are sent at least 30 calendar days before the due date.
- Market participants are required to assess, report and provide written attestations declaring their compliance (e.g. compliant, non-compliant or not applicable) with specific reliability standards by the due date.
- In addition to completing the self-certification form, market participants may be required to attach evidence or provide other information to support their report of compliance.

Discovery Methods: Self-Certifications (Cont.)

The Self-Certification Notice will include the following:

- a spreadsheet with several worksheets,
- detailed instructions on how to complete and submit the worksheets and forms,
- a due date for submission of the worksheets and forms, and
- an attestation form.

The Self-Certification Notice will require the following:

- a response certifying the level of compliance for all monitored applicable NERC non-CIP reliability standards listed in the 2016 MACD CMP,
- a response certifying the level of compliance for all NERC CIP reliability standards applicable to your BES facilities and BES cyber systems,
- information associated with NERC CIP-002-5.1 reliability standard,
- information associated with NERC CIP-014-2 reliability standard (**transmitters**), and
- the attestation form signed by an authorized representative.

Discovery Methods: Self-Certifications (Cont.)

- Market participants can use the *NERC Reliability Standard Audit Worksheet* (“RSAW”) to familiarize themselves with the evidence required to support a compliance claim.

- NERC RSAWs are available at:
[http://www.nerc.com/pa/comp/Pages/Reliability-Standard-Audit-Worksheets-\(RSAWs\).aspx](http://www.nerc.com/pa/comp/Pages/Reliability-Standard-Audit-Worksheets-(RSAWs).aspx)

NERC BOT Approval Date: 11/1/2006
FERC Approval Date: 3/16/2007
Reliability Standard Enforcement Date in the United States: 6/18/2007

Requirements:

- R1. Each Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, and Load-Serving Entity shall have procedures for the recognition of and for making its operating personnel aware of sabotage events on its facilities and multi-site sabotage affecting larger portions of the Interconnection.

Describe, in narrative form, how you meet compliance with this requirement: *(Registered Entity Response Required)*

R1 Supporting Evidence and Documentation

Response: *(Registered Entity Response Required)*

Provide the following:

Document Title and/or File Name, Page & Section, Date & Version

Title	Date	Version
<i>Audit Team: Additional Evidence Reviewed:</i>		

This section must be completed by the Compliance Enforcement Authority.

Discovery Methods: Spot Checks

- Spot checks target a more limited number of requirements from the entire set of applicable reliability standards than compliance audits.
- Spot checks may be conducted at any time during the year.
- Market participants selected for a spot check will be notified up to 30 business days in advance.
- Notification will indicate the reliability requirements in scope, and the timetable and manner in which a response should be provided.

Discovery Methods: Self-Reports

- Self-reporting is the reporting of potential non-compliance with a market rule or reliability standard, identified as part of a self-assessment or an internal review process.
- Market participants are encouraged to self-report the breach to MACD at the time they become aware of the potential breach regardless of whether the market rule or reliability standard is actively monitored by MACD, and to take all reasonable steps to mitigate the impact.
- If a self-report is timely and complete, it is a mitigating factor when assessing penalties and sanctions in the event a confirmed breach.
- Market participants are required to self-report potential breaches of market rules and reliability standards using either the *"Non-Compliance Event Report"* (IESO-FORM-1253) or the *IESO Reliability Compliance Tool*.

Discovery Methods: Self-Reports (Cont.)

To receive the benefit of penalty mitigation, self-reports must meet certain content and timing requirements, which include:

- submitting the self-report to MACD in writing and on a timely basis,
- providing details of the activities that were potentially non-compliant,
- providing reasons for the non-compliance,
- identifying all the market rules and reliability standards that were potentially breached, and
- describing in detail the timeline and steps to remediate the breach and prevent a similar non-compliance in the future.

Discovery Methods: Self-Reports (Cont.)

MACD applies factors to assess the timeliness of a self-report including:

- whether the market participant submitted the self-report before MACD became aware of the potential breach,
- the duration between the discovery of the potential breach and the filing of the self-report, and
- whether the market participant exercised due diligence in the discovery of the potential breach.

Discovery Methods: Compliance Audits

- Ontario's reliability standards compliance auditing program started in 2012.
- MACD conducts both on-site (at the market participant's premises) and off-site (at MACD's premises) audits.
- MACD identifies the market participants and reliability requirements to be audited using a risk-based approach, which evaluates a market participant's compliance with reliability standards and the potential impact that continued non-compliance may have on reliability.
- In the future, the audit program (scope and frequency) will be tailored to each market participant's reliability risk-profile.

Discovery Methods: Compliance Audits (Cont.)

- A compliance audit is a systematic, independent and documented verification process to provide opportunity to demonstrate compliance with the market rules and reliability standards.
- A compliance audit is an objective assessment of the compliance performance by a market participant.
- To pass an audit, the market participant must provide a sufficient quantity and quality of information that demonstrates compliance with a specified market rule or reliability standard over a given period of time.
- To meet the threshold of compliance assurance, the audit team may require various types of information to verify compliance.
- If the market participant's information fails to support compliance, it becomes an audit finding, which is reported to MACD Investigations for follow up.
- The IESO Reliability Standards Auditing web page has information and resources to help you prepare for an audit.
<http://www.ieso.ca/Pages/Participate/Market-Oversight/Reliability-Standards-Auditing.aspx>

References

- Compliance Audits

<http://www.ieso.ca/Pages/Participate/Market-Oversight/Reliability-Standards-Auditing.aspx>

- Non-Compliance Event Report

http://www.ieso.ca/Documents/marketSurv/ms_f1253_Non-ComplianceEventReport.doc

- Ontario Reliability Compliance Program

<http://www.ieso.ca/Pages/Participate/Reliability-Requirements/Reliability-Standards-Compliance.aspx>

- NERC Self-Report User Guide

[http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/ERO%20Self-Report%20User%20Guide%20\(April%202014\).pdf](http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/ERO%20Self-Report%20User%20Guide%20(April%202014).pdf)

- NERC Mitigation Plan Guide

[http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/ERO%20Mitigation%20Plan%20Guide%20\(April%202014\).pdf](http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/ERO%20Mitigation%20Plan%20Guide%20(April%202014).pdf)

<http://www.ieso.ca/Pages/Participate/Market-Oversight/Compliance-Enforcement.aspx>

QUESTIONS?



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RELIABILITY STANDARDS COMPLIANCE ENFORCEMENT

Overview

- IESO Authority to Enforce Reliability Standards in Ontario
- Enforcement Guiding Principles
- MACD Investigations – Initial Steps
- MACD Investigations – Issuance of a Notice of Alleged Breach/Notice of Alleged Breach with Conditions
- Enforcement Process Overview
- Rights and Obligations during an Investigation
- Enforcement Sanctions
- Notice of Non-Compliance
- Mitigation Plans
- Dispute Resolution under the market rules
- Dispute Resolution: Ontario Energy Board Appeal

IESO Authority to Enforce Reliability Standards in Ontario

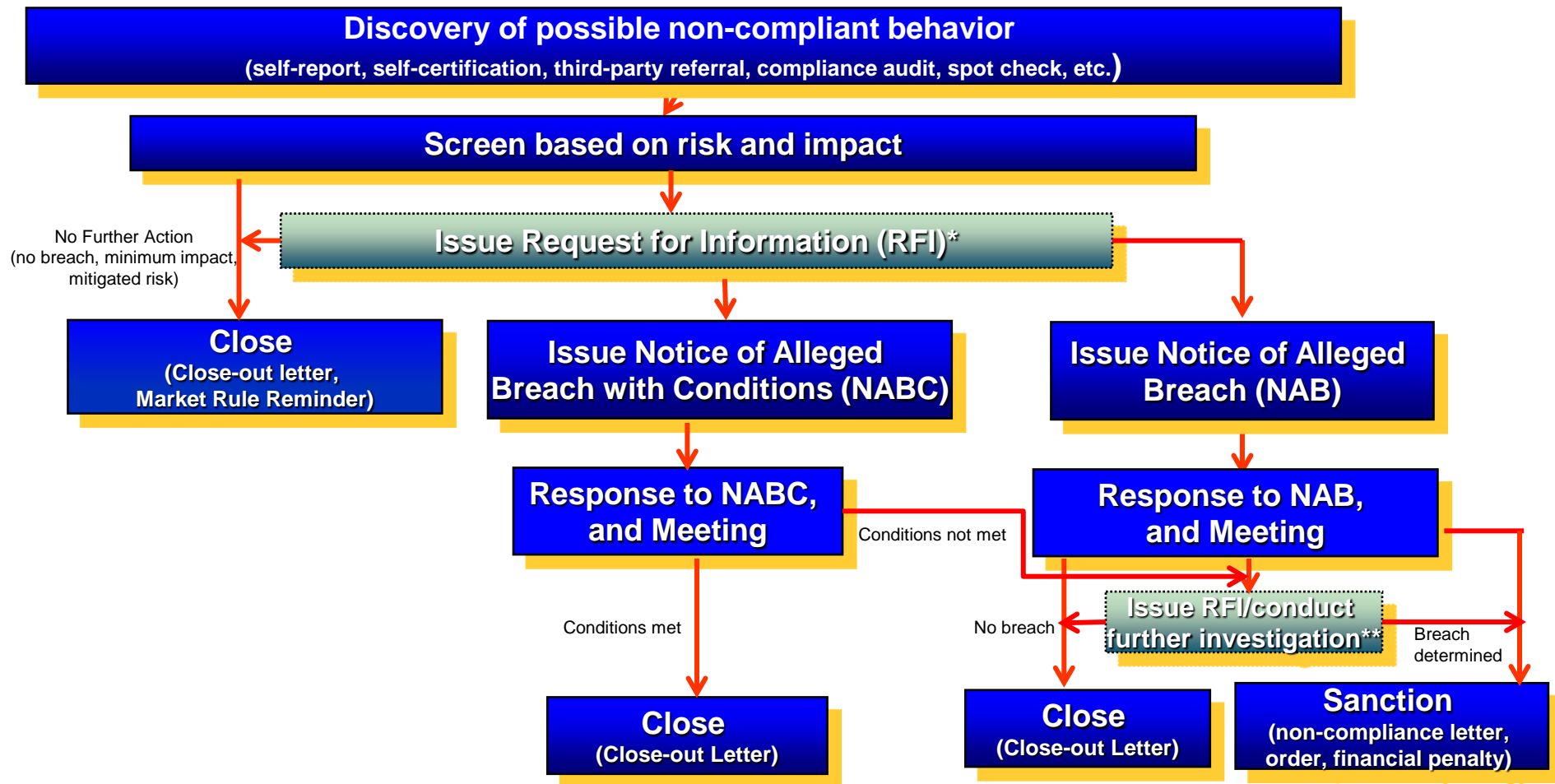
- The *Electricity Act, 1998*, grants the IESO jurisdiction to maintain the reliability of the IESO-controlled grid and the statutory power to create market rules “establishing and enforcing standards and criteria relating to the electricity service or the IESO-controlled grid”.
- The market rules assign to the IESO various functions, powers and authorities to supervise, administer and enforce the market rules and reliability standards.
- The Director of MACD has been delegated the responsibility and authority for compliance monitoring, assessment and enforcement of market rules and reliability standards.

Guiding Principles

A key goal of reliability compliance enforcement is to promote compliance with applicable rules and standards for the benefit of the reliability of the IESO-controlled grid.

- **Fairness:** Striking the right balance between the promotion of compliance and the enforcement of compliance.
- **Consistency:** Applying the same review process and same interpretation of market rules and reliability standards across the sector.
- **Transparency:** Explaining enforcement intentions in advance and reporting on activities.
- **Timeliness:** Dealing with issues within a reasonable time period and according to priority.

Compliance Enforcement: Typical Process Overview



*RFIs may be issued before a COL, MRR, NAB or NABC. This is decided on a case-by-case basis.

**MACD may request further information and/or conduct further investigation (Chapter 3, sections 6.2.4.3 and 6.2.4.4)

MACD Investigations – Initial Steps

Identification and Screening of Compliance Issues:

- MACD assesses whether an event or issue appears to constitute a breach of the market rules or reliability standards.

Preliminary Information Gathering:

- Depending on the event or issue, MACD may gather additional data and information from the following sources:
 - IESO (IESO tools, control room logs, audio tapes, etc.),
 - market participants (requests for information, interviews, etc.), and
 - third parties.

Early Resolution:

If the apparent breach is assessed as having low impact on the markets or the system, MACD may:

- issue a “Market Rule Reminder”, or
- close the file after ensuring certain mitigation measures are in place.

MACD Investigations – Issuance of a Notice of Alleged Breach

- If MACD considers that a market participant may have breached or may be breaching the market rules or reliability standards and that, in the circumstances, it would be appropriate that a sanction or sanctions be imposed, MACD may issue a Notice of Alleged Breach (“NAB”) to the market participant.
- Chapter 3, section 6.2.3 of the market rules sets out the content of the NAB that includes:
 - details of the alleged breach,
 - details of the evidence,
 - details of the sanctions which may be imposed if breach is established,
 - the time within which the market participant may submit a written response to the allegations, and
 - the right of the market participant to request a meeting with MACD to discuss the matter.

MACD Investigations – Issuance of a Notice of Alleged Breach with Conditions

- In appropriate matters including cases that have a low impact on the markets or system, MACD may issue a Notice of Alleged Breach with Conditions (“NABC”).
- The NABC will specify that MACD will discontinue the investigation if:
 - the market participant corrects the cause of the breach,
 - complies with any additional conditions (e.g. additional reporting, etc.), and
 - complies with the conditions by a stipulated date or various dates.
- If the conditions are met in accordance with the NABC, there will be no finding of breach and the matter will be closed.
- If the conditions are not met in accordance with the NABC, MACD will conduct such further investigation into the matter as it deems appropriate and sanctions may be assessed if there is a determination that a breach occurred.

Rights and Obligations during an Investigation

Before a Final Determination is made:

- MACD is required to provide notice and certain details about the investigation (Chapter 3, s. 6.2.3, ss.6.2.3.1, ss.6.2.3.2, and ss. 6.2.3.3).
- The market participant may make written representations in response to the allegations (Chapter 3, ss.6.2.3.4).
- The market participant has a right to request a meeting to discuss the matter (Chapter 3, ss. 6.2.3.5).
- After consideration of representations made by the market participant, MACD may request the market participant to provide further information, and/or MACD may continue with the investigation as it determines appropriate (Chapter 3, ss. 6.2.4.3, ss. 6.2.4.4).
- The market participant is required to comply with any request for information made under Chapter 3, ss.6.2.4.3 (Chapter 3, s.6.2.6).

Rights and Obligations during an Investigation (Cont.)

Information Provided to MACD during an Investigation:

- Is confidential in accordance with Chapter 3, s. 5;
- Shall be, “to the best of the disclosing person’s knowledge, true, correct and complete at the time at which such disclosure or provision is made” (Chapter 1, ss. 11.2.1); and
- If disclosed or provided information “becomes untrue, incorrect, incomplete, misleading or deceptive, the disclosing person shall immediately rectify the situation and disclose or provide the true, correct, complete, not misleading or not deceptive information” (Chapter 1, ss. 11.3.1).

Enforcement Sanctions

If, after consideration of all the evidence and representations made, MACD determines the market participant breached the market rules or reliability standards, it may by order do one or more of the following:

- direct the market participant to do, within a specified period, such things as may be necessary to comply with the market rules;
- direct the market participant to cease, within a specified period, the act, activity or practice constituting the breach;
- impose additional or more stringent record-keeping or reporting requirements on the market participant;
- issue a non-compliance letter; or
- impose a financial penalty provided there was no due diligence or the market participant acted intentionally (Chapter 3, s. 6.2.7).

Financial Penalty - Chapter 3, section 6.6.3

Level of Non-compliance/Rate of Recurrence

- Financial penalties are separated into four levels based on the following set of criteria:
 - Did the market participant fail to comply in whole or in part with the requirements of the market rule?
 - Did the market participant self-report the incident?
 - Did the market participant inform MACD upon request for the reasons for non-compliance?
 - Did the market participant inform MACD of the manner and time the non-compliance will be remedied?
- After determining the level of non-compliance, MACD determines the rate of recurrence based on the frequency and duration of the breach or breaches.

Financial Penalty - Chapter 3, section 6.6.6

Level of Non-Compliance	Range of Sanctions
L1 Partial compliance, self-report	Non-compliance letter or up to \$2000 per breach
L2 Non-compliance, self-report	Non-compliance letter or up to \$4000 per breach
L3 Non-compliance, no self-report, follow-up co-operation	Non-compliance letter or up to \$6000 per breach
L4 Non-compliance, no self-report, no cooperation	\$1,000 to \$10,000 per breach

Financial Penalty - Chapter 3, section 6.6.6A

MACD may impose a financial penalty in excess of the s. 6.6.6 penalties up to \$1,000,000 per occurrence, where:

- The breach occurred during a declared emergency or high risk operating state,
- The breach occurred during a declared market suspension,
- The IESO Board determined the impact of the breach on the IESO market or reliability of the power system is particularly severe, or
- The rate of recurrence of non-compliance is of such frequency or duration that it warrants a higher penalty.

Financial Penalty - Chapter 3, section 6.6.6B

Impact Level	Non-Compliance Level (Severity and Breach History)							
	Low		Moderate		High		Severe	
	Low	High	Low	High	Low	High	Low	High
Low	\$2K	\$25K	\$2K	\$50K	\$3K	\$75K	\$5K	\$100K
<div style="background-color: black; color: white; padding: 5px;"> Apply aggravating and mitigating factors to get final penalty </div>					\$6K	\$450K	\$10K	\$600K
	High	\$4K	\$250K	\$8K	\$500K	\$12K	\$750K	\$20K

Establish starting range

Financial Penalty - Chapter 3, section 6.6.7

Factors (mitigating or aggravating) used to determine the financial penalty within the ranges set out in the tables found in Chapter 3, sections 6.6.6 and 6.6.6B:

- the circumstances in which the breach occurred;
- the severity of the breach;
- the extent to which the breach was inadvertent, negligent, deliberate or otherwise;
- the length of time the breach remained unresolved;
- the actions of the market participant on becoming aware of the breach;
- whether the market participant disclosed the matter to MACD on its own or whether it was prompted to do so;
- any benefit that the market participant obtained or may have obtained as a result of the breach;

Financial Penalty - Chapter 3, section 6.6.7 (Cont.)

Factors (cont.)

- any previous breach by the market participant of the market rules or of the conditions of its licence;
- the actual or potential impact of the breach on the markets, reliability or other market participants;
- any sanction that may be imposed on the IESO by a standards authority as a result of the breach;
- the immediacy of the threat that the breach imposed on reliability or the markets;
- the presence and quality of the market participant's compliance program;
- whether there was a voluntary payment for the value of any benefit gained;
- such other matters as MACD considers appropriate.

Notice of Non-Compliance

- The market participant is notified of the determination and the sanctions by the issuance of a Notice of Non-Compliance.
- A breach determination will become part of the market participant's breach history and may be considered in future enforcement actions. If MACD determines that a breach occurred, details including the name of the market participant, the market rules and reliability standards breached, and the sanctions imposed may be published on the sanctions page of the IESO website.
- A failure to comply with an order constitutes a breach of the market rules (Chapter 3, s. 6.2.9).
- If a market participant has persistently breached the market rules or reliability standards, the IESO may, issue a suspension order, a termination order, or deregister some or all of the market participant's facilities (Chapter 3, s.6.2A).

Mitigation Plans

- A Mitigation Plan is an action plan to, (1) correct a non-compliance, and (2) prevent recurrence of the non-compliance.
- A Mitigation Plan should:
 - address the actual and potential risk posed by the non-compliance,
 - identify controls and corrective actions to reduce the likelihood of a future occurrence, and
 - outline the steps to be performed to mitigate the possible non-compliance.*

*[*NERC Mitigation Plan Guide, (April, 2014) at p.8]*

Mitigation Plans (Cont.)

- While mitigation plans are voluntary, one of the factors considered when determining the financial penalty for a breach is *“the actions of the market participant on becoming aware of the breach”*.
- Implementation of remedial and mitigation measures:
 - may reduce the penalty in case of a confirmed breach, or
 - allow for an alternate disposition of the case (e.g. Close Out Letter, Notice of Alleged Breach with Conditions).
- Effective mitigation plans correct the root-cause of the non-compliance while reducing the risk of similar occurrences.

Dispute Resolution under the Market Rules

- If a market participant disputes a penalty imposed by MACD, it may initiate the dispute resolution process under Chapter 3, section 2 of the market rules.
- The dispute resolution process is initiated by filing a Notice of Dispute.
- The market rules have three stages of dispute resolution: good-faith negotiation, mediation, and arbitration.
- There is a different dispute resolution process for alleged breaches of Chapter 1, section 10A – the general conduct rule. (Chapter 3, s.6.2B).

Dispute Resolution: Ontario Energy Board Appeal

- A market participant has the right to appeal to the Ontario Energy Board (“OEB”) if the financial penalty exceeds \$10,000.00. [*Electricity Act, 1998, s.36.(1), Ontario Regulation 12/01, s.1: Appeals from Penalties imposed under the Market Rules*].
- Before commencing an appeal at the OEB, the market participant must exhaust the dispute resolution mechanisms available to it under the market rules [*Electricity Act, 1998, s.36.(2)*].
- After considering the appeal, the OEB may,
 - dismiss the appeal,
 - revoke or amend the order, or
 - make any order the IESO could have made [*Electricity Act, 1998, s.36.(6)*].
- In addition, the OEB may also make an order revoking, suspending or adding or amending a condition of the appellant’s OEB licence [*Electricity Act, 1998, s.36.(7)*].

References

- Market Rules, Chapter 3, sections 2 and 6
- Market Manual 2, Part 2.6: Treatment of Compliance Issues
- IESO Website:

Compliance page:

- <http://www.ieso.ca/imoweb/marketComp/compliance.asp>

Sanctions:

- <http://www.ieso.ca/imoweb/marketComp/sanctions.asp>

Dispute Resolution:

- <http://www.ieso.ca/Pages/Participate/Market-Oversight/Dispute-Resolution.aspx>

- NERC Mitigation Plan Guide

[http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/ERO%20Mitigation%20Plan%20Guide%20\(April%202014\).pdf](http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/ERO%20Mitigation%20Plan%20Guide%20(April%202014).pdf)

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